U.S. Citizenship and Immigration Services

**Non-Precedent Decision of the Administrative Appeals Office**

MATTER OF O-I-B-S- INC.

DATE: OCT. 31, 2018

APPEAL OF CALIFORNIA SERVICE CENTER DECISION

PETITION: FORM I-129, PETITION FOR A NONIMMIGRANT WORKER

The Petitioner,[1] a provider of digital marketing services, seeks to temporarily employ the Beneficiary as president of a new office[2] under the L-1A nonimmigrant classification for intracompany transferees. Immigration and Nationality Act (the Act) section 101(a)(15)(L), 8 U.S.C. § 1101(a)(15)(L). The L-1A classification allows a corporation or other legal entity (including its affiliate or subsidiary) to transfer a qualifying foreign employee to the United States to work temporarily in a managerial or executive capacity.

The Director of the California Service Center revoked the approval of the petition,[3] concluding that the Petitioner did not establish, as required, that: (1) the Petitioner had a qualifying relationship with the proposed U.S. employer at the time of filing; (2) the U.S. entity had secured sufficient physical premises for its new office at the time of filing; (3) the Beneficiary had at least one year of full-time employment abroad with a qualifying organization in the three years preceding his application for admission; (4) the Beneficiary was employed abroad in a managerial or executive capacity; (5) the U.S. entity would employ the Beneficiary in a managerial or executive capacity within one year of approval of the petition; and (6) the Beneficiary's services are to be used by the U.S. employer for a temporary period.

On appeal, the Petitioner asserts that the Director erroneously revoked the approval of the petition, contends that the Beneficiary meets all eligibility requirements for the benefit sought, and submits additional evidence.

Upon *de novo* review, we will dismiss the appeal as the Petitioner has not overcome four of the six grounds for revocation. However, we will withdraw the Director's findings with respect to the Beneficiary's one year of full-time employment abroad in the three years preceding the filing of the

[1] The Petitioner in this matter is the Beneficiary's Canadian employer. The proposed U.S. employer is which was established in California in 2017.

[2] The term "new office" refers to an organization which has been doing business in the United States for less than one year. 8 C.F.R. § 214.2(l)(1)(ii)(F). The regulation at 8 C.F.R. § 214.2(l)(3)(v)(C) allows a "new office" operation no more than one year within the date of approval of the petition to support an executive or managerial position.

[3] This petition was initially approved for a one-year period by Customs and Border Protection (CBP) at the California port of entry, under the provisions at 8 C.F.R. § 214.2(l)(17).

petition, and her determination that the Petitioner did not establish that the Beneficiary's services would be used for a temporary period.[4]

## I. LEGAL FRAMEWORK

To establish eligibility for the L-1A nonimmigrant visa classification in a petition involving a new office, a qualifying organization must have employed the beneficiary in a managerial or executive capacity for one continuous year within three years preceding the beneficiary's application for admission into the United States. 8 C.F.R. § 214.2(l)(3)(v)(B). In addition, the beneficiary must seek to enter the United States temporarily to continue rendering his or her services to the same employer or a subsidiary or affiliate thereof in a managerial or executive capacity. *Id.*

The petitioner must submit evidence to demonstrate that the new office will be able to support a managerial or executive position within one year. This evidence must establish that the petitioner secured sufficient physical premises to house its operation and disclose the proposed nature and scope of the entity, its organizational structure, its financial goals, and the size of the U.S. investment. *See generally*, 8 C.F.R. § 214.2(l)(3)(v).

Under U.S. Citizenship and Immigration Services (USCIS) regulations, the approval of an L-1A petition may be revoked on notice under six specific circumstances. 8 C.F.R. § 214.2(l)(9)(iii)(A). To properly revoke the approval of a petition, a director must issue a notice of intent to revoke that contains a detailed statement of the grounds for the revocation and the time period allowed for rebuttal. 8 C.F.R. § 214.2(l)(9)(iii)(B).

## II. QUALIFYING RELATIONSHIP

The first issue to be addressed is whether the Petitioner established that it had a qualifying relationship with the Beneficiary's proposed U.S. employer at the time of filing on October 6, 2016.

This classification requires that there be an entity in the United States to employ the beneficiary. In order to meet the definition of "qualifying organization," there must be a U.S. employer. *See* 8 C.F.R. § 214.2(l)(1)(ii)(G)(*2*). Further, to establish a "qualifying relationship," the Petitioner must show that the Beneficiary's foreign employer and the proposed U.S. employer are the same

[4] The Director's determination that the Petitioner did not establish that the Beneficiary's services in the United States would be temporary, pursuant to 8 C.F.R. § 214.2(l)(3)(vii), was based in part on the fact that the Beneficiary had purchased a residence after his initial entry in L-1 status, a factor that we do not find to be relevant to this determination. The Beneficiary remains co-owner of the foreign entity and the Petitioner met its burden to establish his intent to return to Canada at the end of his authorized period of stay.

Further, the Petitioner has submitted sufficient evidence to establish that it employed the Beneficiary in Canada for at least one year in the three years preceding the filing of this petition, as required by 8 C.F.R. § 214.2(l)(3)(iii). Here, the Director's finding was based in part on a statement on the Beneficiary's resume that he sold the Canadian entity in 2013. After reviewing the resume (which contains a clear typographical error) and the totality of the evidence, we find that it supports the Petitioner's claim that he has served as its co-president on a full-time basis since at least 2013.

employer (i.e. one entity with "branch" offices), or related as a "parent and subsidiary" or as "affiliates." *See* section 101(a)(15)(L) of the Act; *see also* 8 C.F.R. § 214.2(l)(1)(ii) (providing definitions of the terms "parent," "branch," "subsidiary," and "affiliate").

As noted, the Petitioner in this matter is the Beneficiary's Canadian employer. In an attachment to the Form I-129, Petition for a Nonimmigrant Worker, the Petitioner stated that the Beneficiary's U.S. employer will be . and indicated that this company's incorporation documents were filed on 2016. The Petitioner provided a receipt indicating that on that date, it paid a third party, LegalZoom.com, for services that would include filing of articles of incorporation and preparing by-laws and resolutions for a California corporation. However, it did not provide a copy of the U.S. entity's actual articles of incorporation or evidence of its ownership. On the Form I-129, the Petitioner identified as its subsidiary.

In response to the Director's notice of intent to revoke (NOIR), the Petitioner provided evidence that was incorporated in California in 2017, more than three months after the Beneficiary filed the petition at a U.S. port of entry. The Petitioner also submitted an action by unanimous written consent in lieu of organizational meeting by board of directors, which indicates that the Beneficiary and another individual own the company in equal proportions. The record contains evidence that the same two individuals are the Petitioner's 50-50 owners.

In the revocation decision, the Director found that, although the Petitioner and appear to share common ownership, did not exist at the time of filing, and therefore there was no qualifying organization in the United States, and the qualifying relationship was not established. Further, the Director noted that ownership, as documented in response to the NOIR, was not consistent with the Petitioner's previous claim that the U.S. entity is its subsidiary.

On appeal, the Petitioner argues that the Canadian and U.S. entities have identical ownership. The Petitioner also explains that in California was incorporated at a later date due to the fact that the applicant was still unsure as to what type of corporation it was going to establish, however the operations had already begun despite incorporation at a later date."

As evidence of these claimed U.S. operations, the Petitioner points to a contract it entered into with (another Canadian entity) and (a Washington State company) in September 2016. The Petitioner states that "the securing of this contract with a U.S. company was what prompted the establishing of a branch in the U.S. and the filing of the L-1 weeks later in October."

The referenced document is a "representative agent agreement" which identifies the petitioning Canadian entity as the "supplier" and and collectively, as the "representative." The agreement gives the representative the right to promote and sell the Petitioner's services to customers and prospective customers in Canada and several western U.S. states.

The evidence submitted on appeal does not overcome the Director's basis for revocation. There must be a qualifying U.S. employer at the time of filing, and not simply an intent to establish a U.S. entity in the near future. Similarly, the foreign entity's steps toward marketing and selling its services in the United States through a representative agreement with an unrelated U.S. company cannot substitute for the existence of a qualifying legal entity in the United States that will serve as the Beneficiary's L-1A employer.

As a final note, we find that the evidence supports a finding that the Petitioner and currently have an affiliate relationship as defined at 8 C.F.R. § 214.2(l)(1)(ii)(L), notwithstanding the Petitioner's initial claim that the U.S. entity would be its subsidiary. Regardless, as the Petitioner did not establish that the Beneficiary's proposed U.S. employer existed at the time of filing, it cannot establish that it had a qualifying relationship with a U.S. entity at that time. For this reason, we find that the Director properly revoked the approval of the petition.

## III. PHYSICAL PREMISES

The next issue to be addressed is whether the Petitioner established that the U.S. employer had secured sufficient physical premises to house its new office. *See* 8 C.F.R. § 214.2(l)(3)(v)(A).

On the Form I-129, the Petitioner stated that the Beneficiary would be working at in California, and that it had secured office space at this address. It provided a screenshot from Google Maps for It did not submit a lease agreement signed by the Petitioner or U.S. employer or any other evidence or explanation regarding the claimed office premises or how the space secured would be sufficient for the new office.

In the NOIR, the Director advised the Petitioner of this deficiency and requested a copy of the U.S. entity's lease agreement and a statement describing the type of space it requires to commence operations.

In response, the Petitioner stated that secured an office in California and submitted a month-to-month lease agreement signed in May 2017, more than six months after the date of filing. The agreement indicates that the maximum number of occupants in the leased office is one.

In the revocation decision, the Director noted that the submitted lease agreement did not establish that the Petitioner met the physical premises requirement at the time of filing. In addition, the Director noted that the Petitioner did not explain how the office secured in 2017 would be sufficient to meet the physical premises requirements for the new U.S. entity.

On appeal, the Petitioner asserts that the U.S. company was previously located at as stated on the petition "with the assistance of its partnership with client It submits a declaration from the Beneficiary in which he states that 'offered us their office as a temporary or possibly permanent location for myself and until we decided where the best location to establish a permanent office was." However,

the Beneficiary's uncorroborated statement alone is insufficient to establish that the U.S. entity had secured physical premises suitable for commencing operations. While the record contains correspondence from [redacted] which shows that the company's address is [redacted] it does not contain confirmation from [redacted] that it offered an office to [redacted], evidence of the terms of that arrangement, or evidence that [redacted] ever occupied that office. A petitioner's unsupported statements are of limited weight and normally will be insufficient to carry its burden of proof. The Petitioner must support its assertions with relevant, probative, and credible evidence. *See Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010).

Subsequent to filing the appeal, the Petitioner provided evidence that [redacted] secured a larger office in [redacted] California in July 2018. Neither the Beneficiary's statement nor the new lease agreement overcome the Director's finding that the Petitioner did not establish that the U.S. entity had secured physical premises as of the date of filing. The Director properly revoked the approval of the petition on this basis.

## IV. EMPLOYMENT IN A MANAGERIAL OR EXECUTIVE CAPACITY

The next issue to be addressed is whether the Petitioner established that: (1) the Beneficiary has been employed abroad in a managerial or executive capacity, and (2) the new U.S. office would employ the Beneficiary in a managerial or executive capacity within one year of the petition's approval.

### A. Definitions

"Managerial capacity" means an assignment within an organization in which the employee primarily manages the organization, or a department, subdivision, function, or component of the organization; supervises and controls the work of other supervisory, professional, or managerial employees, or manages an essential function within the organization, or a department or subdivision of the organization; has authority over personnel actions or functions at a senior level within the organizational hierarchy or with respect to the function managed; and exercises discretion over the day-to-day operations of the activity or function for which the employee has authority. Section 101(a)(44)(A) of the Act.

The term "executive capacity" is defined as an assignment within an organization in which the employee primarily directs the management of the organization or a major component or function of the organization; establishes the goals and policies of the organization, component, or function; exercises wide latitude in discretionary decision-making; and receives only general supervision or direction from higher-level executives, the board of directors, or stockholders of the organization. Section 101(a)(44)(B) of the Act.

### B. Employment Abroad

When examining the managerial or executive capacity of a given beneficiary, we will look to the petitioner's description of the job duties. The petitioner's description of the job duties must clearly describe the duties performed by the Beneficiary and indicate whether such duties are in a

managerial or executive capacity. *See* 8 C.F.R. § 214.2(l)(3)(ii). Beyond the required description of the job duties, we examine the company's organizational structure, the duties of a beneficiary's subordinate employees, the presence of other employees to relieve a beneficiary from performing operational duties, the nature of the business, and any other factors that will contribute to understanding a beneficiary's actual duties and role in a business.

1. Duties

The Petitioner's initial evidence included a broad description of the Beneficiary's duties on the Form I-129. The Petitioner noted that his duties as "Co-President" of the Canadian company were divided between: (1) Planning - including creation of annual operating plans, defining the company's vision, developing and monitoring finances, and developing leadership; (2) Management – including hiring, managing, and terminating personnel, overseeing the company's day-to-day operations, and managing compliance; and (3) Sales and Marketing – including planning and executing sales and marketing initiatives and ensure that sales goals are achieved.

In the NOIR, the Director requested a more detailed description of the Beneficiary's duties, including an explanation of the amount of time spent on each specific task. The Director also asked the Petitioner to explain how the Beneficiary's duties fall within the definition of either managerial or executive capacity.

In response the Petitioner submitted a letter describing the Beneficiary's duties as follows:

- Managing the day-to-day running of the business, in terms of getting orders, answering inquiries and managing budgets. Efficiently analyzing problems and providing viable solutions. (25%)
- Developing and implementing sales strategies to meet the sales target . . . . Implementing lean and continuous improvement in the sales environment. (20%)
- Recruiting and training personnel, ensuring the continuous training and development of key staff . . . , resolve conflicts and make decisions for employees. (10%)
- Identifying key markets and business opportunities and networking with potential partners for further product reach. (10%)
- Implementing reports, controls and managing assigned operations in compliance with established policies and procedures. (10%)
- Managing and overseeing the marketing plan to reach sales objectives. (10%)
- Preparing the annual budget and the operating expense plan. (10%)
- Establishing appropriate site maintenance, security, and sanitation programs. (5%)

The Petitioner also stated that the Beneficiary was "responsible for the co-development and design of Communication Software and Digital Media systems" and that he "continues to work with National and Multi-National partners advancing business development through B2B channels."

In the revocation decision, the Director found that the description submitted in response to the NOIR was too broad and non-specific to explain what types of duties the Beneficiary has performed on a day-to-day basis and therefore insufficient to establish that he has been employed in a role that was primarily managerial or executive in nature.

In the Beneficiary's statement submitted in support of the appeal, he repeats the list of duties as stated above, and asserts that, in Canada, his focus "was directed towards Business and Sales Development" and that he divided his time between seeking out new affiliate partnerships and developing an effectives sales and management team. He also provides additional information regarding the duties performed by other claimed employees in Canada, which we will discuss below.

We agree with the Director that the position descriptions the Petitioner provided at the time of filing and in response to the NOIR are insufficient to establish that the Beneficiary has been employed in Canada in a managerial or executive capacity. The descriptions are too broad to provide any insight into the nature of his day-to-day tasks. For example, the Petitioner stated that the Beneficiary spent one quarter of his time "managing the day-to-day running of the business" without explaining or providing examples of the actual duties he performed to carry out this responsibility. Similarly, the Beneficiary's responsibility for "[i]mplementing reports, controls and managing assigned operations in compliance with established policies and procedures" and establishing site maintenance and "sanitation programs" are vague. We cannot determine what types of activities would be involved in "implementing . . . controls" and "managing assigned operations" or what types of sanitation programs exist within the context of the company's digital marketing business. Reciting a beneficiary's vague job responsibilities or broadly-cast business objectives is not sufficient; the regulations require a detailed description of the beneficiary's daily job duties. The Petitioner has not provided sufficient detail or explanation of the Beneficiary's activities in the course of his daily routine. The actual duties themselves will reveal the true nature of the employment. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir. 1990).

In addition, the Petitioner indicates that 40% of the Beneficiary's time would be related to sales, marketing, and business development activities that have not been described in sufficient detail. While we do not doubt that the Beneficiary has the authority to determine strategies in these areas, there is insufficient information to establish that he is not also involved in carrying out the associated non-managerial sales and marketing duties. As discussed further below, the record does not contain a consistent description of the Petitioner staffing levels in support of its claim that the Beneficiary has had a subordinate staff to relieve him from significant involvement in such sales and marketing duties.

Finally, we note that the Petitioner stated that the Beneficiary has been responsible for the development of communications software and digital media systems, but did not explain how these tasks are managerial in nature, nor did it include these duties in its breakdown of how the Beneficiary spent his time while employed in Canada. The Beneficiary's statement on appeal does not provide further insight into the nature of his day-to-day tasks and the Petitioner does not further address his job duties. Rather, the Petitioner emphasizes that the evidence shows that he is the president of the Canadian entity, a fact which is not in dispute.

Based on the definitions of managerial and executive capacity, the Petitioner must first show that the Beneficiary will perform certain high-level responsibilities. *Champion World, Inc. v. INS*, 940 F.2d 1533 (9th Cir. 1991) (unpublished table decision). Second, the Petitioner must prove that the Beneficiary will be *primarily* engaged in managerial or executive duties, as opposed to ordinary operational activities alongside the Petitioner's other employees. *See Family Inc. v. USCIS*, 469 F.3d 1313, 1316 (9th Cir. 2006); *Champion World*, 940 F.2d at 1533.

Here, even though the record demonstrates that the Beneficiary manages the Canadian business along with the Petitioner's co-owner, the fact that he manages or directs the business does not necessarily establish eligibility for classification as an intracompany transferee in a managerial or executive capacity within the meaning of section 101(a)(44) of the Act. The Beneficiary may exercise discretion over the Petitioner's day-to-day operations and possess the requisite level of authority with respect to discretionary decision-making; however, the broad position descriptions are insufficient to establish that his actual duties abroad have been primarily managerial or executive in nature.

2. Staffing and Organizational Structure

If staffing levels are used as a factor in determining whether an individual is acting in a managerial or executive capacity, we take into account the reasonable needs of the organization, in light of the overall purpose and stage of development of the organization. *See* section 101(a)(44)(C) of the Act.

The initial evidence also included an undated "Company Organization" document which listed the Beneficiary and 10 other individuals within the Canadian company. These employees included a CEO/President, vice president of sales, three sales employees, a customer support employee, a bookkeeper/administration employee, two employees responsible for web development, and a client fulfillment employee.

In the NOIR, the Director requested an organizational chart or diagram showing the Petitioner's structure and staffing levels in Canada, noting that the Petitioner should identify all employees by name, job title, summary of duties, education level, and salary.

In response the Petitioner re-submitted the aforementioned "Company Organization" document provided at the time of filing, a list of 11 employees. The Petitioner also provided a business plan for [redacted] which included an organizational chart for the Canadian operations. That chart includes only five employees - the co-owner/company president/CEO, a vice president of sales, a customer support representative, one web development employee, and a client fulfillment employee.

The Petitioner's response included a resume for its co-owner/president, a resume for the vice president of sales in Canada (which does not include his period of employment with the Petitioner), a 2016[5] employment agreement for [redacted] for the position of "Customer Developer Specialist,"

[5] The cover page for the "Employment Package" states "Version: 03.08.16." The actual date of execution for the agreements is not provided.

and an employment agreement for [redacted] for the position of "Customer Support/Product Specialist."[6]

The Petitioner's response also included financial statements for the Canadian operations which provided data for the fiscal years ended June 30, 2014, to June 30, 2016. In 2016, the Petitioner paid C$8,994 in salaries and wages and made C$32,952 in payments to subcontractors. In 2015, it paid no salaries and wages and paid C$1,497 to subcontractors. Finally, in 2014, it paid C$1,867 in salaries and wages and made no payments to subcontractors.

In the revocation decision, the Director noted the low salary figures in the Petitioner's balance sheets and found insufficient evidence that it employs the 11 individuals listed in its "Company Organization" document. The Director also found that the Petitioner had not established that the Beneficiary had been supervising subordinate managers, supervisors, or professionals.

The Petitioner's appeal does not adequately address these deficiencies. In his statement, the Beneficiary explains the Petitioner's services, which include website development and maintenance, profile correction and listing management, social media set-up and management, and local search engine optimization. He notes that the company requires staff to provide these services to clients, to respond to customer telephone inquiries and to manage its sales team, and states that he did not manage the websites, social media or other technical components.

The Beneficiary's statement incorporates the five-person Canadian organizational chart previously submitted. He explains that his focus was on business and sales development, including hiring, training, and managing a sales team. The only sales employee on the chart is the "VP Sales" and the Beneficiary states that this employee was to take over "Canadian sales team management" shortly before the Beneficiary's transfer to the United States. He provides brief position descriptions of the current duties performed by all five employees on the chart.

The Petitioner must show that it employed the Beneficiary in a managerial or executive capacity for at least one year in the three years preceding the filing of the petition in October 2016. Based on the evidence submitted, at least three of the Petitioner's five claimed employees were hired in the months leading up to the Beneficiary's transfer to the United States and were not available to relieve him from performing non-qualifying duties for a period of one year. Further, there is insufficient evidence to support a finding that the Petitioner employed the 11 individuals named in the "Company Organization" document that the Beneficiary presented at the time of filing.

As noted by the Director, the salary, wage and sub-contractor payments reported in the Petitioner's annual balance statements are quite low and do support the Petitioner's claim that it employed a subordinate staff to relieve the Beneficiary from involvement in the day-to-day operations of the company. Further, although the Petitioner was established in Canada in 2011, it reported sales of

[6] [redacted] and [redacted] job titles were elsewhere identified as "Web development" and "Customer Support Representative," respectively.

C$11,420 in 2014 and C$6,375 in 2015, suggesting that it remained in a preliminary stage of development for much of the three year period preceding the filing of the petition. The Beneficiary states that he hired, training and managed a sales team, but there is no evidence of payments made to sales representatives.

Based on this evidence, we cannot determine whether the Petitioner had employees or contractors in place to relieve the Beneficiary from significant involvement in non-managerial duties during the relevant three-year period of employment abroad, whether he supervised subordinate managerial, supervisory, or professional personnel during that period, or whether he primarily directed the management of the company.

In sum, the Petitioner provided an overly broad and non-specific description of the Beneficiary's job duties in the course of his daily routine, and has submitted conflicting and unsupported descriptions of its structure and staffing levels during the three year period preceding the filing of the petition. As such, the record does not establish that he was employed abroad in a managerial or executive capacity and we find that the Director properly revoked the petition on this basis.

C. U.S. Employment in a Managerial or Executive Capacity within One Year

The final issue we will address is whether the Petitioner established that the Beneficiary would be employed in a managerial or executive capacity within one year of the approval of the new office petition.

In order to qualify for L-1 nonimmigrant classification during the first year of operations, the regulations require a petitioner to disclose the proposed nature of the business and the size of the U.S. investment, and establish that the proposed enterprise will support an executive or managerial position within one year of the approval of the petition. *See* 8 C.F.R. § 214.2(l)(3)(v)(C). This evidence should demonstrate a realistic expectation that the enterprise will succeed and rapidly expand as it moves away from the developmental stage to full operations, where there would be an actual need for a manager or executive who will primarily perform qualifying duties.

At the time of filing and in response to the NOIR, the Petitioner stated that the Beneficiary would perform the same duties in the United States as he has performed in Canada. The deficiencies of that position description have been discussed above and the broad duties alone are insufficient to show that the Beneficiary would be performing primarily managerial or executive duties within one year. The Petitioner's initial evidence did not include a business plan, staffing plan, or other relevant information, such as the size of the United States investment. Further, as noted, the initial evidence did not establish the existence of the U.S. employer or show that physical premises had been secured to operate the new office.

In response to the NOIR, the Petitioner submitted the U.S. entity's "L-1 Business Plan" which states on page 14 that the Beneficiary "will initially be supported by a customer sales representative" and "will also hire additional staff in year 3." The next page identified those additional positions as a sales manager, a client fulfillment manager, two content creators, three sales representatives, and

two customer service representatives. However, the Petitioner must show that it can support the Beneficiary in a managerial or executive position within one year. The Director found that the Petitioner did not demonstrate how a staff of one employee would relieve the Beneficiary from having to primarily perform non-managerial and non-executive tasks by the end of the first year of operations.

On appeal, the Petitioner submits a statement from the Beneficiary, who indicates that, as of May 2018, [redacted] is relying on the services of a social media manager, an operations manager, and a sales representative. He also states that the Petitioner's Canada-based website development manager provides services to both U.S. and Canadian customers. The Petitioner submits affidavits from the U.S. employees identified as sales representative and operations manager. According to their statements, they were hired in January 2018 and December 2017, respectively. This petition was initially approved for a one-year period that ended in October 2017 and the hiring of employees after that date does not support the Petitioner's claim that it was prepared to support the Beneficiary in a managerial or executive capacity at the time it filed the new office petition for its intended U.S. subsidiary.

The third claimed U.S. employee, the social media manager, appeared on the Canadian entity's employee list in a "client fulfillment" role at the time of filing. The Beneficiary states that this employee "has been with [redacted] from inception of the US business in California" but the record does not contain evidence of payments made to her and the Beneficiary's statement alone is insufficient to establish that this employee worked for the company before the end of the first year of operations and relieved the Beneficiary from significant involvement in operational, administrative and other non-managerial duties by the end of the initial approval period.

In October 2018, the Petitioner submitted supplemental materials, including new agreements with several country clubs and a real estate agency, employment agreements for four employees, and evidence that it secured a larger office in July 2018. All four employment agreements are "1099 Contractor Agreements" for sales representatives signed in 2018. The new evidence post-dates the original expiration date of this petition and does not support the Petitioner's initial claim that it would be able to support the Beneficiary in a managerial or executive capacity by the expiration of that petition in October 2017. The Petitioner's ability to support a managerial or executive position as of October 2018 is not an issue that is before us in this matter and we will not address this new evidence in determining whether the approval of this new office petition was properly revoked.

We do not doubt that the Beneficiary was intended to have discretion over the new office's establishment and operations, the ability to hire and supervise any employees, and authority to control the company's finances, and establish its policies and operational guidelines. However, the Petitioner did not establish that these higher level duties would be his primary duties at the end of the initial year of operations. The record does not show that the U.S. entity was prepared to commence operations immediately, or demonstrate how the company would support a managerial or executive position within one year.

## V. CONCLUSION

The approval of the petition was properly revoked as the Petitioner has not established that it had a qualifying relationship with the proposed U.S. employer, that sufficient physical premises were secured for the new office, that the Beneficiary was employed abroad in a managerial or executive capacity, or that the new U.S. office would employ the Beneficiary in a managerial or executive capacity within one year.

**ORDER:** The appeal is dismissed.

Cite as *O-I-B-S- Inc.* ID# 1753633 (AAO Oct. 31, 2018)